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PREFACE

These annual cumulative pocket parts update the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) in effect as of April 1, 2013.

This Supplement also updates the D.C. Code annotations by including notes taken from District of Columbia cases appearing in the following sources: Atlantic Reporter, 3d Series Supreme Court Reporter Federal Reporter, 3d Series Federal Supplement, 2d Series Bankruptcy Reporter.

Current legislation between pamphlets or pocket parts can be accessed online at www.lexisnexis.com/advance, www.lexisnexis.com/research, and http://dcclims1.dccouncil.us/lims.

The unannotated District of Columbia Official Code can be accessed on the District of Columbia Council Website at http://www.dccouncil.us.

Later laws and annotations will be cumulated in subsequent annual Pocket Parts.

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DIVISION IV. CRIMINAL LAW AND PROCEDURE AND PRISONERS.

TITLE 22. CRIMINAL OFFENSES AND PENALTIES.

SUBTITLE I. CRIMINAL OFFENSES.

SUBTITLE I. CRIMINAL OFFENSES.

Chapter 3. Arson.

§ 22-301. Definition and penalty.

Section references. — This section is referenced in § 22-2101, § 22-3152, § 23-546, and § 24-112.

LAW REVIEWS AND JOURNAL COMMENTARIES

"The District of Columbia Revitalization Act and Criminal Justice: The Federal Government's Assault on Local Authority." 4 The District of Columbia Law Review 77 (1998).

§ 22-303. Malicious burning, destruction, or injury of another's property.

Section references. — This section is referenced in § 22-951, § 22-3152, § 23-546, and § 23-581.

CASE NOTES

Defenses.

Trial court did not plainly error in failing to raise sua sponte the issue of whether defendant had been adequately provoked, as justification defense in prosecution for malicious destruction of property; defendant specifically testified that when he got into police transport van, a door of which he was accused of denting, he was no longer mad, defendant also claimed that he actually did nothing at all to the van, and given these confusing positions before the trial court, it was difficult to conclude that the error was clear or obvious, and that the trial court should have sua sponte raised provocation. Brannon v. United States, 43 A.3d 936, 2012 D.C. App. LEXIS 162 (2012).

CHAPTER 4. ASSAULT; MAYHEM; THREATS.

§ 22-404. Assault or threatened assault in a menacing manner; stalking.

Section references. — This section is referenced in § 5-132.21, § 7-2502.03, § 16-2333, § 22-951, and § 23-581.

CASE NOTES

ANALYSIS

Nature and elements of offenses.
—Significant bodily injury, nature and elements of offenses.
Right to trial by jury.

Nature and elements of offenses.

— Significant bodily injury, nature and elements of offenses.

Offense of assault with significant bodily injury was not a crime of violence, and thus, defendant should not have been charged with assault with significant bodily injury while armed or with a related count of possessing a firearm during a crime of violence (PFCV), which increased his potential term of imprisonment. Colter v. United States, 37 A.3d 282, 2012 D.C. App. LEXIS 63 (2012), writ of certiorari denied by 133 S. Ct. 554, 184 L. Ed. 2d 360, 2012 U.S. LEXIS 8443, 81 U.S.L.W. 3229 (U.S. 2012).

Right to trial by jury.

The trial court's failure to sua sponte empanel a jury for defendant's simple assault trial, since a conviction would subject defendant to deportation under federal immigration law, did not constitute plain error; simple assault was not a jury-demandable offense, and the collateral consequence of deportation did not transform the petty offense of simple assault to a serious offense. Fretes-Zarate v. United States, 40 A.3d 374, 2012 D.C. App. LEXIS 136 (2012).

§ 22-404.01. Aggravated assault.

Section references. — This section is referenced in § 5-132.21 and § 24-112.

Emergency legislation.

For temporary addition of the Act of Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 806b, concerning assault on a public vehicle inspection officer, see § 401 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

For temporary addition of the Act of Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 806c, concerning aggravated assault on a public vehicle inspector officer, see § 401 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

§ 22-405. Assault on law enforcement officers or other officers of the District, including firefighters and those charged with juvenile supervision or community supervision.

Section references. — This section is referenced in § 23-524, § 24-112, § 24-261.03, § 24-403, and § 24-403.01.

CASE NOTES

ANALYSIS

Examination of witnesses.
Presumptions and burden of proof.

Examination of witnesses.

Trial court's refusal to allow defendant to cross-examine police officer, who was shot while trying to arrest defendant, about police regulations that required reports to be filed "immediately" when officers drew and pointed their firearms and to be sequestered during the resulting investigation, did not violate the Confrontation Clause, in prosecution for resisting a police officer and other offenses, as such cross-examination would have resulted in a distracting "mini-trial" on collateral issues; report regulation did not establish time limit for filing reports or provide for any sanctions if report was submitted late, officer had been shot such that some delay in submission of his report was to be expected, and responsibility to sequester officers during a use-of-force investigation was placed on investigating officer. Coles v. United States, 36 A.3d 352, 2012 D.C. App. LEXIS 19 (2012).

Presumptions and burden of proof.

Defendant was entitled to benefit of pretrial rebuttable presumption of vindictiveness when government added charge of assault on a police officer (APO) to preexisting charge of possession of marijuana, which shifted burden to government to explain its decision to add APO charge; government knew from date of defendant's arrest that there were facts potentially supporting charge of assault and resisting arrest, government added APO charge after defendant sought to enforce his subpoena and trial was continued, and government, by announcing that it was ready to go to trial, communicated that fluid pretrial litigation period was over. Simms v. United States, 41 A.3d 482, 2012 D.C. App. LEXIS 144 (2012).

CHAPTER 7. BRIBERY; OBSTRUCTING JUSTICE; CORRUPT INFLUENCE.

Subchapter III. Obstructing Justice.

§ 22-721. Definitions.

CASE NOTES

ANALYSIS

Due administration of justice.
Official proceeding.

Due administration of justice.

Phrase "due administration of justice," as used in statute defining obstruction of justice, in part, as corruptly, or by threats of force, obstructing or impeding or endeavoring to instruct or impede the due administration of justice in any official proceeding, does not include an initial police response to the scene of a crime. Wynn v. United States, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Phrase "due administration of justice," as used in statute defining obstruction of justice, in part, as corruptly, or by threats of force, obstructing or impeding or endeavoring to instruct or impede the due administration of justice in any official proceeding, is used primarily, if not exclusively, to describe the proper functioning and integrity of a court or hearing. Wynn v. United States, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Official proceeding.

An "official proceeding," as that term is used in statute defining obstruction of justice, in part, as corruptly, or by threats of force, obstructing or impeding or endeavoring to instruct or impede the due administration of justice in any official proceeding, does not include the actions of police officers first responding to a crime. Wynn v. United States, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

CHAPTER 8. BURGLARY.

§ 22-801. Definition and penalty.

Section references. — This section is referenced in § 11-502, § 22-4001, § 23-546, and § 24-112.

CASE NOTES

ANALYSIS

Admissibility of evidence.
—Probative value, admissibility of evidence.

Admissibility of evidence.

— Probative value, admissibility of evidence.

Probative value of evidence of defendant's heroin addiction to place what happened at the crime scene in an understandable context was substantially outweighed by the prejudicial effect its admission would have for defendant, such that the evidence was inadmissible for this purpose, in prosecution for burglary, robbery, kidnapping, and felony murder; jury did not need the drug-addiction evidence to derive a coherent story of the evidence, in that even without the evidence of drug addiction, the evidence suggested that the crimes likely were the acts of a desperate person, and it did not appear that the drug-addiction evidence would be indispensable to the jury's understanding of the charged offenses. U.S. v. Morton, 2012 WL 3242844 (2012).

Remand was required for trial court to conduct anew its discretionary balancing of the probative value of the evidence of defendant's heroin addiction as corroborative of inferences that pointed to defendant as the perpetrator against its prejudicial effect, in prosecution for burglary, robbery, kidnapping, and felony murder; defendant's addiction had probative value as corroborative of defendant's identity as the perpetrator, while evidence of his addiction might be reflective of his character and might suggest that he had criminal propensities, the relevance of the evidence was logically independent of those possibilities, and a fuller assessment by trial court of probative value of the evidence could affect its balancing of probative value against prejudicial effect. U.S. v. Morton, 2012 WL 3242844 (2012).

CHAPTER 12A. DETECTION DEVICES.

§ 22-1211. Tampering with a detection device.

Section references. — This section is referenced in § 23-581.

Emergency legislation.

For temporary amendment of (a)(1), see § 101 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

CHAPTER 13. DISTURBANCES OF THE PUBLIC PEACE.

Sec.
22-1312. Lewd, indecent, or obscene acts; sexual proposal to a minor.

§ 22-1307. Blocking passage.

Section references. — This section is referenced in § 23-101.

Emergency legislation.

For temporary amendment of section, see

§ 102 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

§ 22-1312. Lewd, indecent, or obscene acts; sexual proposal to a minor.

It is unlawful for a person, in public, to make an obscene or indecent exposure of his or her genitalia or anus, to engage in masturbation, or to engage in a sexual act as defined in § 22-3001(8). It is unlawful for a person to make an obscene or indecent sexual proposal to a minor. A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $500, imprisoned for not more than 90 days, or both.

(July 29, 1892, 27 Stat. 324, ch. 320, § 9; July 8, 1898, 30 Stat. 724, ch. 638; Sept. 26, 1942, 56 Stat. 760, ch. 565; June 9, 1948, 62 Stat. 346, ch. 428, title I, § 101; June 29, 1953, 67 Stat. 92, ch. 159, § 202(a)(1); Apr. 24, 2007, D.C. Law 16-306, § 210, 53 DCR 8610; May 26, 2011, D.C. Law 18-375, § 2(b), 58 DCR 731; Sept. 26, 2012, D.C. Law 19-171, § 79, 59 DCR 6190.)

Section references. — This section is referenced in § 22-1809, § 22-4001, § 22-4151, and § 23-101.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 made a technical correction to the 1892 act which did not affect this section as codified.

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

§ 22-1321. Disorderly conduct.

Section references. — This section is referenced in § 16-801 and § 22-1809.

Emergency legislation.

For temporary amendment of (c) and addition of (c-1), see § 103 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

CASE NOTES

Probable cause.

Police officers did not have probable cause to arrest occupants of house for District of Columbia offense of disorderly conduct; even if officers were told of reports of a loud party or loud music and some officers heard loud music upon arrival, there were no reports of noise that was so unreasonably loud or sustained for such a lengthy period of time as to constitute disorderly conduct, and when the officers arrived on the scene, they did not observe unreasonably loud, sustained noise that disturbed a considerable number of persons. Wesby v. District of Columbia, 841 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 5680 (2012).

CHAPTER 15. FORGERY; FRAUDS.

§ 22-1510. Making, drawing, or uttering check, draft, or order with intent to defraud; proof of intent; "credit" defined.

Section references. — This section is referenced in § 28-3152.

Emergency legislation.

For temporary amendment of section, see § 104 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

CHAPTER 18. GENERAL OFFENSES.

§ 22-1810. Threatening to kidnap or injure a person or damage his property.

Section references. — This section is referenced in § 23-546.

CASE NOTES

Evidence.

Reasonable person in position of neighbor, whose house caught fire on day before alleged threat was made, would not believe that juvenile, who paraded back and forth on sidewalk in front of neighbor, performing to laughing audience and singing modified rap song about setting block and her house on fire, meant to damage her house, and thus, evidence was insufficient to support delinquency adjudication based on felony threats to damage property; neighbor and juvenile were friends with no history of animosity, much less violence, and there was no basis for reasonable inference that juvenile was involved in fire at neighbor's house. In re S.W., 45 A.3d 151, 2012 D.C. App. LEXIS 285 (2012).

CHAPTER 20. KIDNAPPING.

§ 22-2001. Definition and penalty; conspiracy.

Section references. — This section is referenced in § 11-502, § 22-3152, § 22-4001, § 23-546, and § 24-112.

CASE NOTES

Admissibility of evidence.

Probative value of evidence of defendant's heroin addiction to place what happened at the crime scene in an understandable context was substantially outweighed by the prejudicial effect its admission would have for defendant, such that the evidence was inadmissible for this purpose, in prosecution for burglary, robbery, kidnapping, and felony murder; jury did not need the drug-addiction evidence to derive a coherent story of the evidence, in that even without the evidence of drug addiction, the evidence suggested that the crimes likely were the acts of a desperate person, and it did not appear that the drug-addiction evidence would be indispensable to the jury's understanding of the charged offenses. U.S. v. Morton, 2012 WL 3242844 (2012).

Remand was required for trial court to conduct anew its discretionary balancing of the

probative value of the evidence of defendant's heroin addiction as corroborative of inferences that pointed to defendant as the perpetrator against its prejudicial effect, in prosecution for burglary, robbery, kidnapping, and felony murder; defendant's addiction had probative value as corroborative of defendant's identity as the perpetrator, while evidence of his addiction might be reflective of his character and might suggest that he had criminal propensities, the relevance of the evidence was logically independent of those possibilities, and a fuller assessment by trial court of probative value of the evidence could affect its balancing of probative value against prejudicial effect. U.S. v. Morton, 2012 WL 3242844 (2012).

CHAPTER 21. MURDER; MANSLAUGHTER.

§ 22-2101. Murder in the first degree — Purposeful killing; killing while perpetrating certain crimes.

Section references. — This section is referenced in § 7-627, § 7-651.12, § 11-502, § 22-2103, § 22-3152, § 22-4001, § 23-113, § 23-546, § 24-112, § 24-211.07, and § 24-251.02.

CASE NOTES

ANALYSIS

Admissibility of evidence.
—Confessions, admissibility of evidence.
Instructions.
—Aiding and abetting, instructions.
—Deliberation and premeditation, instructions.
Weight and sufficiency of evidence.
—In general.

Admissibility of evidence.

— Confessions, admissibility of evidence.

Murder defendant's confession, though obtained after police failed to scrupulously honor his assertion of his right to remain silent during police interview, was nevertheless voluntary, such that confession was admissible for the limited purpose of impeachment, as there was no hint of physical coercion of defendant by police, or that police raised their voices to defendant, police gave defendant sodas and allowed him to smoke, he received several breaks to use the bathroom and was allowed to meet with his grandmother, and given defendant's extensive experience with criminal and juvenile justice systems, he clearly understood the Miranda rights that were given to him. Pettus v. United States, 37 A.3d 213, 2012 D.C. App. LEXIS 22 (2012).

Instructions.

— Aiding and abetting, instructions.

There was no reasonable possibility that the jury applied an arguably ambiguous general instruction on aiding and abetting given in prosecution of defendant and co-defendant for first-degree premeditated murder so as to improperly exempt the government from its burden of proving that they each premeditated and deliberated over killing the victim, and, thus, reversal of defendant's murder conviction was not warranted based on the instruction; trial court, in instructing jury on elements of the offense, took care to state that the government had to prove that defendants caused the death of victim that they did so with a specific intent to kill victim, and that they did so after premeditation and deliberation, and in context, the thrust of the instruction was that an accomplice might be guilty without having performed all the physical actions necessary to complete the charged offense, not that an accomplice might be guilty without having the requisite mental state for that offense. Ewing v. United States, 36 A.3d 839, 2012 D.C. App. LEXIS 23 (2012), writ of certiorari denied by 2013 U.S. LEXIS 3092, 81 U.S.L.W. 3579 (U.S. Apr. 15, 2013).

— Deliberation and premeditation, instructions.

Trial court's re-instruction to jury during its deliberations in prosecution for first-degree premeditated murder that premeditation and deliberation could occur "during the beating," but that jury had to find that they "occurred before the killing," in response to jury's note asking whether the premeditation and deliberation necessary for the offense could have occurred during, rather than before, the altercation that resulted in the homicide, adequately dispelled jury's difficulties with concrete accuracy, and, thus, was appropriate; jury evinced no confusion about need to base its findings on the evidence, nor any inclination to indulge in undue speculation, and trial court's prior in-

structions had made jury well aware of the necessity for proof beyond a reasonable doubt of each element of the offense, including premeditation and deliberation. Ewing v. United States, 36 A.3d 839, 2012 D.C. App. LEXIS 23 (2012), writ of certiorari denied by 2013 U.S. LEXIS 3092, 81 U.S.L.W. 3579 (U.S. Apr. 15, 2013).

Weight and sufficiency of evidence.

— In general.

Kentucky Supreme Court's initial assessment of evidence of defendant's extreme emotional disturbance (EED) and reliance in resolving appeal on case that involved retroactive application of "unexpected and indefensible" judicial revision of Kentucky murder statute was irrelevant in habeas proceeding, as it did not form sole basis for that court's denial of defendant's sufficiency of the evidence claim. Parker v. Matthews, 132 S. Ct. 2148, 183 L. Ed. 2d 32, 2012 U.S. LEXIS 4306 (2012).

§ 22-2103. Murder in the second degree.

Section references. — This section is referenced in § 22-3152, § 23-113, § 23-546, § 24-112, and § 24-251.02.

CASE NOTES

ANALYSIS

Instructions.
—Lesser-included offenses, instructions.
Weight and sufficiency of evidence.
—Degree of murder, weight and sufficiency of evidence.

Instructions.

— Lesser-included offenses, instructions.

Trial court's erroneous jury instruction on aiding and abetting did not affect defendants' substantial rights and therefore was not plain error requiring reversal of convictions for unarmed second-degree murder as lesser-included offenses of first-degree murder, even though defendants were convicted as aiders and abettors and prosecutor emphasized that theory of liability in closing argument, where government produced evidence from eyewitnesses that defendants actively and personally participated throughout the vicious beating and kicking that led to victim's death, and from this, the jury could have inferred that defendants acted, if not with a specific intent to kill, at the very least with malice. Ingram v. United States, 40 A.3d 887, 2012 D.C. App. LEXIS 137 (2012), writ of certiorari denied by 133 S. Ct. 1483, 185 L. Ed. 2d 383, 2013 U.S. LEXIS 1748, 81 U.S.L.W. 3471 (U.S. 2013).

Weight and sufficiency of evidence.

— Degree of murder, weight and sufficiency of evidence.

Evidence was sufficient to support conviction for second-degree murder while armed; defendant had recently been served with complaint for divorce from victim, resulting in altercation in which defendant threatened victim, defendant's brother testified that, on the evening of the murder, defendant left the house at about midnight with a nine-millimeter handgun, which, according to expert testimony, was the kind of weapon used in the killing, and less than a half hour after, several eyewitnesses observed a man matching defendant's description shoot the victim as she sat in the driver's seat of her vehicle. Williams v. U.S., 2012 WL 2159301 (2012).

CHAPTER 22. OBSCENITY.

§ 22-2201. Certain obscene activities and conduct declared unlawful; definitions; penalties; affirmative defenses; exception.

Section references. — This section is referenced in § 22-4001 and § 22-4151.

CASE NOTES

Punishment and sanctions.

In sentencing defendant for possession and transportation of child pornography, the district court provided sufficient explanation for the imposition of a 40-year term of supervised release as part of the sentence; court explained that conduct underlying defendant's offenses was "of grave concern" because there was very aggressive sexual activity in the images defendant possessed when compared to other images that the court had seen in other cases, and court noted that defendant claimed he had sexual contact with a six-year-old, and noted his apparent willingness to take his conduct beyond looking at images, and court explained that rehabilitative treatment was not a cure and was something that defendant would have to deal with for the rest of his life. United States v. Accardi, 669 F.3d 340, 2012 U.S. App. LEXIS 4017 (C.A.D.C. 2012), writ of certiorari denied by 133 S. Ct. 198, 184 L. Ed. 2d 101, 2012 U.S. LEXIS 6310 (U.S. 2012).

LAW REVIEWS AND JOURNAL COMMENTARIES

The Library Internet Filter: On The Computer Or In The Child?, 11 Regent University Law Review 425.

CHAPTER 23. PANHANDLING.

§ 22-2301. Definitions.

LAW REVIEWS AND JOURNAL COMMENTARIES

Rejecting the Parasite and Motivating the Laggard-A Constitutional Analysis of the District of Columbia's Aggressive Panhandling Statute. Katherine S. Broderick, 2 D.C.L.Rev. 180 (1994).

CHAPTER 24. PERJURY; RELATED OFFENSES.

Sec.
22-2405. False statements.

§ 22-2405. False statements.

(a) A person commits the offense of making false statements if that person wilfully makes a false statement that is in fact material, in writing, directly or indirectly, to any instrumentality of the District of Columbia government, under circumstances in which the statement could reasonably be expected to be relied upon as true; provided, that the writing indicates that the making of a false statement is punishable by criminal penalties or if that person makes an affirmation by signing an entity filing or other document under Title 29 of the District of Columbia Official Code, knowing that the facts stated in the filing are not true in any material respect or if that person makes an affirmation by signing a declaration under § 1-1061.13, knowing that the facts stated in the filing are not true in any material respect;

(b) Any person convicted of making false statements shall be fined not more than $1,000 or imprisoned for not more than 180 days, or both. A violation of

this section shall be prosecuted by the Attorney General for the District of Columbia or one of the Attorney General's assistants.

(Dec. 1, 1982, D.C. Law 4-164, § 404, 29 DCR 3976; Aug. 20, 1994, D.C. Law 10-151, § 113(e), 41 DCR 2608; July 2, 2011, D.C. Law 18-378, § 3(e), 58 DCR 1720; June 5, 2012, D.C. Law 19-137, § 121(b), 59 DCR 2542.)

Section references. — This section is referenced in § 4-251.03, § 4-1501.09, § 42-1102, § 47-3504, and § 47-3506.

Effect of amendments.

D.C. Law 19-137, in subsec. (a), substituted "or if that person makes an affirmation by signing a declaration under § 1-1061.13, knowing that the facts stated in the filing are not true in any material respect" for "respect".

Legislative history of Law 19-137. — Law 19-137, the "Comprehensive Military and Overseas Voters Accommodation Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-356, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 27, 2012, it was assigned Act No. 19-334 and transmitted to both Houses of Congress for its review. D.C. Law 19-137 became effective on June 5, 2012.

CHAPTER 26. PRISON BREACH; MISPRISIONS.

Subchapter I. Escape.

§ 22-2601. Escape from institution or officer.

Section references. — This section is referenced in § 24-112 and § 24-407.

Emergency legislation.

For temporary amendment of (a)(1), see § 105 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

CHAPTER 28. ROBBERY.

§ 22-2801. Robbery.

Section references. — This section is referenced in § 11-502, § 22-2802, § 23-546, and § 24-112.

CASE NOTES

ANALYSIS

Admissibility of evidence.
—Circumstances and condition of person robbed, admissibility of evidence.
—Expert testimony, admissibility of evidence.
Argument and conduct of counsel.
Counsel for accused.
—Adequacy of representation, counsel for accused.

Admissibility of evidence.

— Circumstances and condition of person robbed, admissibility of evidence.

Probative value of evidence of defendant's heroin addiction to place what happened at the crime scene in an understandable context was substantially outweighed by the prejudicial effect its admission would have for defendant, such that the evidence was inadmissible for

this purpose, in prosecution for burglary, robbery, kidnapping, and felony murder; jury did not need the drug-addiction evidence to derive a coherent story of the evidence, in that even without the evidence of drug addiction, the evidence suggested that the crimes likely were the acts of a desperate person, and it did not appear that the drug-addiction evidence would be indispensable to the jury's understanding of the charged offenses. U.S. v. Morton, 2012 WL 3242844 (2012).

Remand was required for trial court to conduct anew its discretionary balancing of the probative value of the evidence of defendant's heroin addiction as corroborative of inferences that pointed to defendant as the perpetrator against its prejudicial effect, in prosecution for burglary, robbery, kidnapping, and felony murder; defendant's addiction had probative value as corroborative of defendant's identity as the perpetrator, while evidence of his addiction might be reflective of his character and might suggest that he had criminal propensities, the relevance of the evidence was logically independent of those possibilities, and a fuller assessment by trial court of probative value of the evidence could affect its balancing of probative value against prejudicial effect. U.S. v. Morton, 2012 WL 3242844 (2012).

— Expert testimony, admissibility of evidence.

Trial court's exclusion of robbery defendant's proffered expert testimony on eyewitness identification did not violate his constitutional right to present a defense, as defendant made an extensive presentation of his theory of misidentification through argument and a witness; witness corroborated defendant's argument of misidentification by stating that victim's book of checks and cell phone were given to her by two people other than defendant, defendant conducted ample cross-examination of victim on her ability to observe the face of her assailant, and defense counsel stated during closing argument that stranger identification was less reliable, and that victim did not have enough time to observe defendant and focused on gun instead. Patterson v. United States, 37 A.3d 230, 2012 D.C. App. LEXIS 64 (2012), amended by, opinion withdrawn in part by 56 A.3d 1152, 2012 D.C. App. LEXIS 502 (D.C. 2012).

Argument and conduct of counsel.

Prosecutor's unobjected-to comments during closing argument that robbery defendant's use of his girlfriend as a defense witness in an attempt to bolster his defense that victim had misidentified him as the perpetrator was a bunch of "malarkey" and "garbage," did not constitute plain error, as the arguments were made in the context of the overwhelming corroborative evidence and, in all likelihood, had very little effect on outcome of trial, and prosecutor was attempting to discredit the misidentification defense and reinforce victim's identification of defendant. Patterson v. United States, 37 A.3d 230, 2012 D.C. App. LEXIS 64 (2012), amended by, opinion withdrawn in part by 56 A.3d 1152, 2012 D.C. App. LEXIS 502 (D.C. 2012).

Counsel for accused.

— Adequacy of representation, counsel for accused.

Prosecutor, by recommending a 20-year sentence for defendant on his conviction for armed robbery and related weapons and other offenses, committed a grave and inexcusable breach of written plea agreement, pursuant to which prosecutor had agreed not to allocute for a sentence greater than ten years; while the prosecutor withdrew her request for a 20-year sentence, which occurred only after the judge brought the problem to counsel's attention), her subsequent allocution was anything but an emphatic retreat from the impropriety, and the demands of fairness required something better from the government than a blatant breach of the plea agreement followed by the prosecutor's implied dissatisfaction with that agreement during the course of her allocution. Clark v. U.S., 2012 WL 2159358 (2012).

Chapter 30. Sexual Abuse.

Subchapter II. Sex Offenses.

§ 22-3002. First degree sexual abuse.

Section references. — This section is referenced in § 22-3007, § 22-3010, § 22-4001, § 22-4502, § 23-113, § 24-112, and § 24-403.01.

CASE NOTES

Ineffective assistance of counsel.

Defense counsel's failure to present medical expert to serve as rebuttal evidence against government's witnesses, and their ability to recall due to their state of mind as alleged crack cocaine users, did not prejudice defendant, and thus could not amount to ineffective assistance in prosecution for sexual abuse; defendant admitted to having sexual encounters with both women and his DNA was matched to semen found on each one, evidence presented at trial included testimony and medical reports that both victim had fresh injuries after their sexual encounters with defendant, and jury was aware of victims' long history of drug use. Thomas v. U.S., 2012 WL 1207422 (2012).

§ 22-3006. Misdemeanor sexual abuse.

Section references. — This section is referenced in § 16-801, § 22-4151, and § 23-581.

CASE NOTES

Separate acts.

The trial court's refusal to sever the misdemeanor sexual abuse charges related to victim one from the misdemeanor sexual abuse charges related to victim two was erroneous; defendant's defense was that the sexual encounters were consensual, the intent required for the offense was only that defendant had sexual contact with the victims intending to "gratify (his) sexual desire," and the fact that victim one may not have consented to sexual activity showed nothing as to whether victim two consented to sexual activity with defendant. Robles v. U.S., 2012 WL 3600888 (2012).

Subchapter III. Admission of Evidence in Sexual Abuse Offense Cases.

§ 22-3022. Admissibility of other evidence of victim's past sexual behavior.

Section references. — This section is referenced in § 22-1839.

LAW REVIEWS AND JOURNAL COMMENTARIES

From Chastity Requirement to Sexual License: Sexual Consent and a New Rape Shield Law. Michelle J. Anderson, 70 Geo. Wash. L. Rev. 51 (2002).

CHAPTER 32. THEFT; FRAUD; STOLEN PROPERTY; FORGERY; AND EXTORTION.

Subchapter II. Theft; Related Offenses.

§ 22-3214.01. Deceptive labeling.

CASE NOTES

Admissibility of evidence.

Thirty DVDs and 39 CDs allegedly seized from defendant at time of his arrest were admissible in prosecution for deceptive labeling of sound and audiovisual recordings, despite chain-of-custody concerns such as failure of

police to mark each DVD and CD for identification, record titles of discs, or seal the evidence bag containing the discs, combined with dearth of testimony at trial about evidence-handling procedures of the evidence control branch; there was no evidence that police failed to maintain continuous custody over the discs seized from defendant, nor any evidence of tampering or other mishandling. Plummer v. United States, 43 A.3d 260, 2012 D.C. App. LEXIS 155 (2012).